

Law and Literature: Perspectives of the Justice System

Compiled by Justice David Ellis, Illinois Appellate Court, First District

Perspectives of ...

... Defendants and their Families

The jury is going to remember Caroline tortured to death. They'll want someone to pay for the crime.¹



I walked out, to cross these big, wide [jailhouse] corridors I've come to hate, corridors wider than all the Sahara desert. The Sahara is never empty; these corridors are never empty. If you cross the Sahara, and you fall, by and by vultures circle around you, smelling, sensing, your death. They circle lower and lower: they wait. They know. They know exactly when the flesh is ready, when the spirit cannot fight back. The poor are always crossing the Sahara. And the lawyers and bondsmen and all that crowd circle around the poor, exactly like vultures. Of course, they're not any richer than the poor, really, that's why they've turned into vultures, scavengers, indecent garbage men, and I'm talking about the black cats, too, who, in so many ways, are worse. I think that, personally, I would be ashamed. But I've had to think about it and now I think that maybe not. I don't know what I wouldn't do to get Fonny out of jail.²



“A man who looks guilty is found guilty.”³

¹ *Presumed Innocent* by Scott Turow.

² *If Beale Street Could Talk* by James Baldwin.

³ *The Gods of Guilt* by Michael Connelly.



“America is a war and you are on the other side. How’s a black man ever going to get a fair trial with the enemy on the bench and in the jury box? My life in white hands? You Jake, that’s how. You are my secret weapon because you are one of the bad guys. You don’t mean to be but you are. It’s how you was raised. Nigger, negro, black, African-American, no matter how you see me, you see me different, you see me like that jury sees me, you are them. Now throw out your points of law Jake. If you was on that jury, what would it take to convince you to set me free? That's how you save my ass. That’s how you save us both.”⁴



It turns out that I watch too much television. I was expecting a scientist to come and testify about DNA. I was looking for a pair of good-looking detectives to burst into the courtroom at the last minute, whispering something urgent to the prosecutor. Everyone would see that this was a big mistake, a major misunderstanding. We would all be shaken but appeased. I fully believed that I would leave the courtroom with my husband beside me. Secure in our home we would tell people how no black man is really safe in America.

Twelve years is what they gave him. We would be forty-three years old when he was released. I couldn’t even imagine myself at such an age. Roy understood that twelve years was an eternity because he sobbed right there at the defendant’s table.⁵



Though he had killed by accident, not once did he feel the need to tell himself, that it had been an accident. He was black and he had been alone in the room where a white girl had been killed: therefore he had killed her. That was what everyone would say, anyhow, no matter what he said.

Although he could not put it into words, he knew not only had they resolved to put him to death, but they were determined to make his death mean more than a mere punishment; that they

⁴ *A Time to Kill* by John Grisham.

⁵ *An American Marriage* by Tayari Jones.

regarded him as a figment of that black world which they feared and were anxious to keep under control.⁶



He's in jail. So where we were, I was sitting on a bench in front of a board, and he was sitting on a bench in front of a board. And we were facing each other through a wall of glass between us. You can't hear anything through this glass, and so you both have a little telephone. You have to talk through that. ***

I always remember now, because he's in jail and I love his eyes and every time I see him I'm afraid I'll never see him again. So I pick up the phone as soon as I get there and I just hold it and I keep looking up at him.

I hope that nobody has ever had to look at anybody they love through glass.⁷



I have practiced, over the last few weeks, how not to look threatening. My smile in court can't be too big or toothy (can't look unremorseful), or too tiny (don't want to look cold-blooded); rather, just a polite, gentle, toothless smile that doesn't hide my pain but shows I'm making an effort to get through this.

I've run through how I will sit at the defense table, too. Can't lean my head on my hand; it comes too close to looking bored or even disrespectful. Can't lean back against the chair and cross one leg over the other, either; it seems too flippant and overconfident. Sitting forward, hands resting comfortably in front of me, will be the position. Humble, composed, attentive, hopeful. My movements, whatever they are—a turn of the head, a raising of the hand—must be at medium-speed. If I move too quickly, I might startle, give some indication of an impetuous, fiery side. Too slowly, I'm the calculating killer with ice in my veins.

I have practiced the look on my face for the different occasions. Eye contact with the jury, with rare exceptions, will be a no-no. But when it happens, I'll be ready. No smiles. My lips will tuck in slightly—a grim pose—suggesting dignity, sadness, peacefulness. My eyes will narrow a bit, as if I were smiling, and the combination with my straight mouth will show the jury that I'm trying to be pleasant to them, trying to be polite—that these things are part of my basic nature—but in all my sadness and fear I cannot bring myself to smile.

⁶ *Native Son* by Richard Wright.

⁷ *If Beale Street Could Talk* by James Baldwin.

For any humor in the courtroom, I will give the smile I've decided on but will not laugh. I will be the one person who is unable to enjoy the moment. When Detective Cummings testifies, I will look at him curiously, mouth suspended slightly, eyebrows tilted to the center, eyes intense, head craned forward a little. If Cummings says anything controversial—anything that contradicts our story—I may even raise my hands off the table momentarily, lean back, maybe cast a glance at Mandy with disbelief, before returning my eyes to the witness, closing my mouth in frustration. During these moments I will not look at the jury, so my reaction won't seem contrived; it will just be a private moment with my trusted attorney.

All of these things I have rehearsed in front of my bathroom mirror for the past two weeks. I brought in a chair from the kitchen table and just sat there, staring at my reflection, changing wardrobes and expressions and mannerisms and gauging imagined reactions.

As expected, I did not sleep a wink last night. I was neatly combed and pressed today, but my face must have shown the strain of the last few months, the dark circles, the crow's feet that were not present three months ago, the permanent wrinkles etched now across my forehead. This, I realize, is not necessarily a disadvantage. Let the jurors see what this has done to me.⁸

... the Police

People forget that the cops see first the victims and then the perpetrators. From the baby some crack whore dropped into the bathtub to the kid beat into stupefaction by his mother's eighteenth live-in boyfriend, the old lady whose hip gets broken when a purse snatcher knocks her to the sidewalk, the fifteen-year-old wannabe dope slinger gunned down on the corner. The cops feel for the vics and hate the perps, but they can't feel too much or they can't do their jobs and they can't hate too much or they'll become the perps. So they develop a shell, a "we hate everybody" attitude force field around themselves that everyone can feel from ten feet away. You gotta have it, or this job kills you, physically or psychologically. Or both.⁹

⁸ *Line of Vision* by David Ellis.

⁹ *The Force* by Don Winslow.

... Defense Attorneys

“Okay. So I’m here.” Bearded, Hobie, in his elegant suit, lectures Seth with a finger raised. “I work. I get paid. I don’t fall in love with them. Some go out the courtroom door, some don’t. I accept all collect calls from the penitentiary. But that’s the end of my sympathy gig. Now, you’ve gone and made it your lifetime hobby to feel sorry for this young man, that’s your thing. But don’t be layin that on me.” Hobie sweeps his hand. “There eight million stories in the naked city. You’ve had it rugged. Lucy’s had it rugged. You-all I feel sorry for. Folks in this place—most times it turns out they made their own trouble.”¹⁰



“The law was not about truth. It was about negotiation, amelioration, manipulation.”¹¹

... Lawyers and Judges

Tommy had learned that there were three interests at stake in every trial—those of the prosecution, the defense, and the court. And the judge’s agenda frequently had nothing to do with the issues in the case. Yee was chosen for this assignment almost certainly on the basis of statistics, since he was the least reversed trial judge in the state. But he had not achieved that kind of record by accident. It meant he would take no chances. In the criminal world, solely the defendant had the right to appeal, and thus Judge Yee would rule against [the defendant] on evidentiary questions only if the precedents were unequivocally in Tommy’s favor. Yee remained a prosecutor at heart. If they convicted [the defendant], he was going to get life. But until then, Judge Yee was going to cut [the defendant] every break.¹²



But the calendars were full—it would take about a thousand years to try all the people in the American prisons, but the Americans are optimistic and still hope for time—and sympathetic or merely intelligent judges are as rare as snowstorms in the tropics.¹³

¹⁰ *The Laws of our Fathers* by Scott Turow.

¹¹ *The Lincoln Lawyer* by Michael Connelly.

¹² *Innocent* by Scott Turow.

¹³ *If Beale Street Could Talk* by James Baldwin.



As a lawyer, I lived by a solemn watchword: Never offend a judge. I laughed at all their jokes. When they ruled against me, even stupidly, I said thank you. I solemnly refrained from any discussion about the ability or temperament of anyone on the bench, living or dead. I have rarely seen a judge who did not bear grudges—it is one of the perks of unquestioned power.¹⁴

... Juries

“You must plead insanity. You must give the jury a way out. You must show them a way to find him not guilty, if they are so inclined. If they’re sympathetic, if they want to acquit, you must provide them with a defense they can use to do it.”¹⁵

... Defense Attorneys, Police Officers, and Judges

“What was so different about Billy versus the other people walking up and down Roosevelt Avenue at that time, Detective? He was wearing a black wool coat and kept his hands in his pockets in the dead of winter. What was so different about him that made you follow him and only him?”

“He was walking quickly and looking around, like he was nervous.”

“Walking quickly in the dead of winter. Looking around nervously while he walked alone in a neighborhood you agreed was dangerous and gang-infested. Walking quickly and acting nervous while an unmarked car, with unknown occupants, *followed* him. *That’s* what you’re telling the judge struck you as suspicious.”

The detective glances at the judge.

I tick off the points on my hand. “He was walking on Roosevelt Avenue like several other people, he was wearing a winter coat like several other people, he had his hands in his pockets like several other people, he was looking around nervously and walking quickly while some stranger followed him in a beater Chevy. Is that *it*, Detective?”

The heat has fully reached the detective’s face. I’m sure he’s the combative sort ordinarily. He’d like to have it out with me behind the courthouse, if he had his druthers.

“He fit a profile,” he answers with a bit less bravado. “It’s a known fact that suburban kids come here to buy drugs.”

“Ah,” I say, like I’ve discovered gold, like we’ve finally arrived at the truth. “He looked like a

¹⁴ *Personal Injuries* by Scott Turow

¹⁵ *A Time to Kill* by John Grisham.

suburban kid.”

“He did.”

“Because he is white.”

“Because—he looked like a suburban kid.”

I drop my chin a notch and look up at the detective. “Among the several individuals who were walking along Roosevelt Avenue at that point, isn’t it true that Billy Braden was the only white person?”

“I don’t recall,” he snaps.

“You picked him out because he was a white kid in a black neighborhood.”

“I didn’t.”

Of course, he did. Billy looked like someone who didn’t belong. It’s not that Detective Forrest was acting illogically. It was somewhat logical. But when it comes to racial profiling, the police department gets very sensitive. They don’t want to admit that they single out a white kid in a black neighborhood any more than they want to admit that they single out a black kid in a white neighborhood.

And no judge wants to condone racial profiling, either. Judge Goodson is a temperamental sort—if he weren’t, he’d have his own felony courtroom by now—but he isn’t stupid. Unless the prosecutor cleans this up, the judge will have to toss this one.¹⁶

... Lawyers

“First, there’re always motions. Bane of my existence. On the other side of every case we have, there’s a defense firm getting paid by the hour. So it’s money in their pocket to file every brain-damaged, not-a-chance-in-hell motion they can think of. Motion to dismiss. Motion for summary judgment. Motion to reconsider prior motion. Motion to declare Puerto Rico a state. You can’t believe this. And we’re on a contingency. Nobody pays me to answer this dreck. And if I win ten motions, but lose the eleventh, the whole case still craters.”¹⁷

... Judges

The older judges always tell you not to rush. They have a dozen sayings: ‘There’s no stopwatch on the court reporter’s transcript.’ ‘The court of appeals won’t reverse for delay of game.’ I find myself staring down into the open pages of my bench book. It’s an oversized

¹⁶ *The Last Alibi* by David Ellis.

¹⁷ *Personal Injuries* by Scott Turow

volume, with a red clothbound spine, heavy stock pages lined in green, feathered edges, a cover clad in rough black Moroccan leather. The pages before me are blank, as undetermined as I am.

Decide, I tell myself, as I so often do. In this job, deliberation is respected. Indecision is not. My work, in the end, is simply that, deciding, saying yes or no. But it's hard labor for the natively ambivalent. There's no other job I know of that more reliably reveals the shortcomings of a personality than being a judge. The pettish grow even more short-tempered; the silently injured can become power-mad or abusive. For someone who can spend a tortured moment before the closet, picking a dress, this work can be maddening. I'm supposed to let the conclusions roll forth as if they were natural and predetermined, as if it were as easy as naming my favorite color (blue). But I wait now, as I often do, silently hoping that some alternative, some forceful thought or feeling, will expose itself.¹⁸



Judge Taylor was on the bench, looking like a sleepy old shark, his pilot fish writing rapidly below in front of him. Judge Taylor looked like most judges I had ever seen: amiable, white-haired, slightly ruddy-faced, he was a man who ran his court with an alarming informality—he sometimes propped his feet up, he often cleaned his fingernails with his pocket knife. In long equity hearings, especially after dinner, he gave the impression of dozing, an impression dispelled forever when a lawyer once deliberately pushed a pile of books to the floor in a desperate effort to wake him up. Without opening his eyes, Judge Taylor murmured, “Mr. Whitley, do that again and it’ll cost you one hundred dollars.”¹⁹

¹⁸ *The Laws of our Fathers* by Scott Turow.

¹⁹ *To Kill a Mockingbird* by Harper Lee.

... the Truth

What I know is this: they didn't believe me. Twelve people and not one of them took me at my word. There in front of the room, I explained Roy couldn't have raped the woman in room 206 because we had been together. I told them about the Magic Fingers that wouldn't work, about the movie that played on the snowy television. The prosecutor asked me what we had been fighting about. Rattled, I looked to Roy and to both our mothers. Banks objected, so I didn't have to answer, but the pause made it appear that I was concealing something rotten at the pit of our very young marriage. Even before I stepped down from the witness stand, I knew that I had failed him. Maybe I wasn't appealing enough. Not dramatic enough. Too not-from-around-here. Who knows? Uncle Banks, coaching me, said, "Now is not the time to be articulate. Now is the time to give it up. No filter, all heart. No matter what you're asked, what you want the jury to see is why you married him."

I tried, but I didn't know how to be anything other than "well spoken" in front of strangers. I wish I could have brought a selection of my art, the Man Moving series, all images of Roy—the marble, the dolls, and a few watercolors. I would say, "This is who he is to me. Isn't he beautiful? Isn't he gentle?" But all I had were words, which are as light and flimsy as air. As I took my seat beside Andre, not even the black lady juror would look at me.²⁰



"You know this only makes sense one way," Brand said. "Rusty pleading?"

"What do you mean?"

"I mean he'd only plead to obstruction if he killed his wife."

"What if he didn't kill his wife, but messed with the computer?"

"He only messed with the computer if he killed her," Brand answered.

That was the traditional logic of the law. The law said that if a man ran away or covered up or lied, it proved he was guilty. But to Tom, that never made sense. Why should somebody falsely accused follow the rules? Why wouldn't somebody who saw the legal machinery clank and grind and screw itself stupid say, "I'm not trusting this broken contraption"? Lying to dispel a false accusation was probably better justified than lying in the face of a truthful one.²¹

²⁰ *An American Marriage* by Tayari Jones.

²¹ *Innocent* by Scott Turow.



Paul, in turn, is incredulous. Isn't this about truth, Your Honor? Does the prosecution really have a problem in unearthing the truth?

This word, as always, brings a smile to my lips. *Truth*. Each side gives their own version of what happened, Mandy once said to me, and somewhere in the middle lies the truth. Somewhere in the middle. That elusive middle. A middle that we just might reach.

But I doubt it.²²



“You know, when I first began in this line, I swore to myself I would never let an innocent man plead guilty. That resolve did not get me through my first year in practice. I represented a fine young man. Poor. But he was twenty years old with never so much as an arrest after growing up in the bleakest part of Kehwahnee. But he was in a car with childhood friends, they were sharing a few bottles of malt liquor, and one of them saw a man who had two-timed his mother, and this young man had a gun in his pocket and shot this two-timer through the window of the car with no more reflection than it took to say the word ‘dead.’

My client had nothing to do with that murder. Nothing. But you know how things go in this process. The killer said his friends had been together in the car to help him hunt the decedent down. He told that tale to avoid the death penalty, which was being freely applied in this county in those days. And so my client was charged with murder. Better sense told the prosecutors my client was not involved. But they had a witness. And they offered my client probation for a lesser plea. He wanted to be a police officer, that young man. And would have made a fine one. But he pleaded guilty. And went on with a different life. And clearly that was the right decision. He became a tile layer, he has a business, three children, all through college. One of them is a lawyer only a little older than you.”

“What are you saying, Sandy?”

“I’m saying that I have learned to trust my client’s judgment on these matters. No one is better equipped to decide whether it is worth brooking the risks.”²³

²² *Line of Vision* by David Ellis.

²³ *Innocent* by Scott Turow.



Aronson was getting at the fine line between seeking the truth and seeking a verdict in your client's favor. They weren't always the same thing.²⁴



"You pick the right jury and you walk. If the D.A. picks the right jury, you get the gas. It depends strictly on the jury, and in this county you can pick the right folks."²⁵

... Judges, Prosecutors, and Police Officers

Malone takes the stand and the bailiff reminds him that he's still sworn in. Berger smiles at him and says, "Sergeant Malone, does the phrase 'testilying' mean anything to you?"

"Generally. I've heard it in reference to police not telling the exact truth on the stand," Malone says.

"The exact truth," Berger says. "Is there an inexact truth?"

"There are different points of view," Malone says.

"Ah." Berger looks to the jury. "And isn't it true that officers' point of view is that they 'testilie' in order to convict a defendant that they feel is guilty, regardless of the admissible evidence?"

"I've heard it used in that context."

"But you've never done it."

"No, I have not," Malone says. "If you don't count a few hundred exceptions."

"Now," Berger says, "it's your testimony that you did not have probable cause to enter the apartment on suspicion of drugs on February 13, 2015, is that correct?"

"Yes."

"And it's your sworn testimony that you did have probable cause based on your seeing my clients' associates carrying weapons. Is that correct?"

"Yes."

"You saw the weapons."

"They were in plain sight," Malone says.

"And absent your seeing those weapons 'in plain sight,'" Berger says, "you had no probable cause to enter that domicile, is that correct?"

"That is correct."

²⁴ *The Gods of Guilt* by Michael Connelly.

²⁵ *A Time to Kill* by John Grisham.

“And when you saw those weapons,” Berger says, “they were in the suspects’ possession, is that correct?”

“Yes.”

“I’d like to enter into evidence this document,” Berger says.

“What is it?” Hinman asks. “We haven’t been notified of this.”

“It just came into our possession, Your Honor.”

“Both counsel approach the bench.”

Malone watches Hinman go up. She flashes him a WTF look, but he doesn’t know what the fuck, either.

“Your Honor,” Berger says, “this is an evidence voucher dated 5/22/2013. You’ll note it logs in a MAC-10 pistol with the serial number B-7842A14. It was vouchered into the evidence room of the Thirty-Second Precinct on the date recorded. The Thirty-Second is, of course, in Manhattan North.”

Berger goes back to the cross-examination. He hands Malone a document. “Do you recognize this?”

“Yes, it’s an evidence voucher for the MAC-10 pistol removed from one of the suspects.”

“Is that your signature?”

“Yes.”

“Will you read for us the serial number of that weapon?” Berger asks.

“B-7842A14.”

Berger hands him another document. “Do you recognize this?”

“It appears to be another evidence voucher.”

“And it vouchers in a MAC-10 pistol, isn’t that right?”

“That’s correct.”

“Please read us the date of that voucher.”

“May 22, 2013.” Goddamn it, Malone thinks. Goddamn it, they assured me the weapons were squeaky clean. Berger is walking him toward a cliff and there’s no stopping.

“Now please read us the serial number,” Berger says, “of the MAC-10 pistol seized on May 22, 2013.”

I’m totally fucked, Malone thinks. “B-7842A14.” Malone hears the jury react. He doesn’t look over, but he knows they’re staring daggers at him now.

“It’s the same weapon, isn’t it?” Berger asks.

How the fuck did he get this voucher? Malone wonders. Like everything else, dummy. He bought it. “It seems to be.”

“So,” Berger says, “as an experienced police officer, could you tell us how the same weapon could be locked away in the Thirty-Second Precinct evidence room and then magically appear ‘in plain sight’ in the suspects’ hands on the night of February 13, 2015?”

“Approach the bench.”

“Your Honor,” Hinman says, “we do not know the provenance of this document, we were not allowed sufficient time to investigate its legitimacy, its accuracy—”

“Goddamn it, Mary,” the judge says, “if you cooked up this case—”

“I wouldn’t for one moment impugn Ms. Hinman’s ethics,” Berger says. “But the fact remains that if Sergeant Malone did not see the weapons as he claims that he did, there was no probable cause, and any evidence found in the domicile is fruit of a poisoned tree. I’ll move to dismiss, Your Honor.”

“You bring me one big headache here,” the judge says. He sighs, then adds, “I’m going to exclude the MAC-10.”

“That still leaves the TEC-9,” says Hinman.

“Right,” Berger says, “the jury is going to believe that one weapon is dirty but the other is clean. Please.”

Malone knows that Hinman is considering her options, all of them shitty. One of them is that NYPD officers are selling automatic weapons out of their evidence rooms to drug dealers. Another is that a highly decorated NYPD detective perjured himself on the stand. If she goes with that, it could open up a flood of headlines, the shooting becomes wrong, and IAB launches an investigation on one Sergeant Denny Malone, including all his previous testimony. Hinman could lose not only this case, but have twenty others reversed. Twenty guilty skels will walk out of prison and she’ll walk the plank. There’s one other option.

He hears Hinman ask Berger, “Would your client be open to a plea offer?”

“It depends on the offer.”

Malone feels the bile rise in his mouth as Hinman says, “One count of simple possession. A twenty-five-thousand-dollar fine, two years with time served deducted, and deportation.”

“Twenty thousand, time served and deportation.”

“Your Honor?” Hinman asks.

The judge is disgusted. “If the defendant agrees, I will accept that plea and issue the negotiated sentence.”

“One more thing,” Hinman says. “The record is sealed.”

“I have no problem with that,” Berger says with a smirk. There was no media in the room, Hinman thinks. There’s a good chance of keeping this off the radar.

“The record is sealed,” the judge says. “Mary, the court is not happy about this. Go do the paperwork. Send Malone into my chambers.” The judge gets up.

Hinman walks over and tells Malone, “I’m going to fucking kill you.”

Berger just smiles at him.

Malone goes into chambers. The judge doesn’t offer him a seat. “Sergeant Malone,” the judge says, “you were about three syllables away from losing your shield, your gun, and being indicted for perjury.”

“I stand by my testimony, Your Honor.”

“As will Russo and Montague,” the judge says. “The Blue Wall.”

Goddamn right, Malone thinks. But he keeps his mouth shut.

“Thanks to you,” the judge says, “I have to release an almost certainly guilty defendant. To protect the NYPD, who are supposed to be protecting us.”

It’s thanks to Berger, asshole, Malone thinks. And some careless assholes at the Three-Two too lazy to shit-can an old evidence voucher. Or who are on Berger’s pad. Either way, I’ll find out.

“Do you have anything to say, Sergeant?”

“The system is screwed up, Your Honor.”

“Get out, Sergeant Malone. You make me sick.”

I make you sick, Malone thinks as he walks out. You make me sick, you hypocrite. You just participated in a cover-up of this thing, you know what’s going on. You didn’t protect cops out of the goodness of your heart, you protected us because you have to. You’re part of the system, too.

Hinman is waiting for him in the hallway. “Both our careers were swirling around the bowl in there,” she says. “I had to cut that bastard a deal to save us.”

Poor you, Malone thinks. I cut deals every damn day, a lot worse than this one.

“You knew the score, so cut the Joan of Arc routine.”

“I never told you to commit perjury.”

“You don’t care what we do when you get convictions,” Malone says. “‘Do what you have to do.’ But let something go south, then you say, ‘Play by the rules.’ I’ll play by the rules when everyone else does.” After all, he thinks as he walks out, they don’t call it the Criminal Courts for nothing.²⁶

... Judges and Defendants

After a brief lunch, as the call is winding to an end, we reach the Crime of the Day. Four members of the Five Street Diggers, a Gangster Outlaw set, stand before me for arraignment on a newly filed complaint. Rudy Singh has stepped up for the state. Two cops, Tic-Tacs, are beside him with their

²⁶ *The Force* by Don Winslow.

beerpots, sweaters, and running shoes. Gina Devore, the PD, takes the lead for the defense. Singh explains the background. As she was leaving the jail where she had visited her brother, a Five Street homegirl, Rooty-Too, was snatched—kidnapped—by other Goobers, the Hanging Hipsters, a rival group within the gang. I decline Singh’s invitation to describe Rooty-Too’s injuries in greater detail than saying she is hospitalized with contusions, missing teeth, and lacerations in the vaginal area.

The Five Streets were desperate for revenge. They captured a Hipster, a ghetto star known as Romey Tuck, beat him, and then chopped off both his arms with machetes. The defendants were arrested in an apartment at Fielder’s Green. There one forearm sat bleeding onto newspaper on the linoleum kitchen table, as it was being displayed to other Five Streets as a trophy.

“Is the issue bond?” I ask.

“Judge,” says Gina, “the defendants are juveniles. The state’s petitioned to try them as adults.” Good, I almost say.

“Judge, they’re being held in the jail. You know what that’s like.”

In for violence within the gang, they may not be protected by the usual strict codes. None of these boys is full-grown—two are rangy but not filled out, the smallest is still not much over five feet. I understand.

“Judge, if you’d consider bail. They can’t go to school. Their visiting privileges are limited. One of these young men, Marcus—my client Marcus Twitchell—” Gina’s eyes cheat southward to her file to be 100 percent certain she has got the name. “Marcus is an honor student. He was selected last summer for Project Restore. He was—”

Marcus, the last arrested, has been brought straight here from the station and has not yet been processed. He’s still ‘G-down’ or ‘Gangster down,’ dressed in gang attire, which includes a satiny Starter jacket in the glistening aquamarine of the Miami Dolphins and gangsta baggies hiked down so his belt line’s at pubic level, revealing several inches of his striped briefs. His Brownies— brown garden gloves worn for scuffling, shooting, and leaving no fingerprints—still hang out of his side pocket. His eyes never reach above a spot two or three feet below me. He is slowly chewing gum.

I ask about his record. “Three station adjustments,” Rudy reads. Marcus has two thefts, which count for little with me. The poor will steal. Then the third. Agg Battery. Another revenge beating. Someone was stomped.

“How long ago?”

“Two weeks, Yaw Onah.”

I shake my head. Bond at \$100,000 full cash. So much for Marcus. So much for his chance. Even on a sleepless morning, with my loins sore from loving and my heart pregnant with what I figure for false hope, I cannot stretch this far. The other lawyers do not even bother with similar motions.²⁷

²⁷ *The Laws of our Fathers* by Scott Turow.

... Prosecutors and Suspects

It was almost ten o'clock at night. The attack had happened around six, as dusk had settled over the city in early spring.

The woman, the mother, was really just a girl, all of eighteen years, with dark, kinky hair pulled back with a rubber band, a thin face, and large brown eyes. She was wearing a pink cotton long-sleeved shirt and jean shorts, denim cut off a respectable length down her thigh.

Assistant County Attorney Jason Kolarich trod lightly, lifting the wooden chair off the hardwood floor to avoid scraping. "Miss Flores?" he said.

"Yes," she said with some effort, a hint of *j* on top of the *y*. English was not her first language. It might not be her language at all. She sat in the chair opposite Kolarich and laced her hands together, as if in prayer.

"Hablas Inglés?"

"Un poquito," she answered with apology. "Lee-tle."

"Vale." Where the hell was Witness Services? Why didn't Nova bring up a translator? Gina Alvarez, Nova's partner, spoke Spanish, but he needed the official translator. It was a union thing. Pass over the certified translator and someone would file a grievance. It took another half hour before Lisa from Wit Serv showed up.

"Tell her I'm a prosecutor, and would she please tell me what happened?" said Kolarich, which Lisa translated to Caridad Flores.

She felt more at ease with the translator in the room. The story came out in short bites, because each sentence had to be translated, even when Kolarich thought he understood it, so it had an odd quality to it, not simply a freewheeling, natural conversation. Caridad Flores spoke in a soft, restrained voice, fear shaking her words. Fear from what happened, Kolarich thought, or maybe fear of him, of law enforcement.

She was walking on the sidewalk on the 7100 block of South Briar Way with her baby in one of those travel pouches you wear over your shoulders and drop your baby in, so the baby's back is against your chest, facing forward, that kind of thing. A nice walk in the fresh air before she put her baby daughter, Gracelia, down for a nap.

But then a car pulled up to the curb. A man got out. He had a gun. He blocked her forward progress and motioned toward the car. She may not have spoken English, but a gun to your infant's head requires no translation.

Then she did something that the offender probably didn't expect. She did something smart. She realized that if she got into that car, she and her baby would never get out.

So she ran. And she flagged down a patrol car, around the corner and a block away.

Kolarich knew the rest from the police report. Patrol Officers Nova and Alvarez did a drive-around, found the vehicle that fit the description and the partial plate, and lit their overheads. The offender sped forward. Two blocks into the chase, a gun flew out the driver's side window and bounced against the street curb. Nova jumped out of the car and retrieved it while the driver, Officer Alvarez, continued the chase and cut off the offender with the help of a second patrol unit two blocks farther down. Marshall Rivers was taken into custody without incident. A search of his person and vehicle revealed a crowbar, switchblade, and rope.

And Kolarich knew a lot more about the offender from his rap sheet. This was the third time he'd attacked a woman at gunpoint. Five years ago, it pled down to simple assault when the victim didn't show for court. No prison time. A year later, he was arrested for the rape of a teenage girl in an alley off Marquette, but the charges were dropped when, voilá, the victim refused to press charges. He did nine months on a gun charge a year ago. Tonight, his attack on Caridad Flores, was the third woman he'd attacked.

The third woman with a Mexican last name.

"He's not dumb, this guy," said Officer Richard Nova, the arresting officer. "Picks his vics carefully. All three illegals. Undocumented citizens."

"Who won't testify," said Kolarich.

And what were the odds that Caridad Flores would? About zero. She was already asking if she could leave. She was probably waiting, any minute, for ICE to show up and deport her and her baby.

Took a lot of courage for her to flag down the cops to begin with.

But her courage wouldn't last until trial. No matter how much they reassured her, she wouldn't trust them to let her stay here in America. She wouldn't even give the cops her home address.

"So all we got's a lousy gun charge," said Nova. "Maybe, *maybe* two years inside, with our shitty laws. Out in one."

"Maybe," said Kolarich. "Maybe not."

He made a phone call, called in a favor. Then he went to Interview Room Three, where the suspect was sitting with his left hand cuffed to the metal table.

Kolarich tended to trust his first vibe, which had been negative, but now he was seeing him up close, and he let it wash over him as he walked in and introduced himself to Marshall Rivers. Rivers was wearing a plain white t-shirt, torn and straining against his muscular upper body. His head was freshly shaved, and he wore a goatee. He had a bad complexion and eyes that screamed out at Kolarich. *Menacing*—that word stayed with him. This man was bad. Trouble. He wore a dull expression, but those predatory eyes gave him away. The kind of guy who could part a sidewalk of pedestrians just by walking in a straight line.

Three women, Kolarich thought to himself. The first one, the case was pleaded out; the second time,

the woman was scared off.

He didn't want to miss the third time.

"You need anything, Marshall?" he asked. "Take a piss, cup of water, cigarette?"

He hoped that Marshall smoked, or chewed tobacco, something that Kolarich would do, too, if so. It formed a bond, a small thing, but meaningful.

Rivers shook his head but didn't speak. A smirk played on his face. A tough guy. Not afraid of nuthin'.

Kolarich eyed the tattoo on Marshall's forearm. It ran all the way from elbow to wrist, a bloodred dagger with a black snake curled around it, a multipronged tongue hissing out of the viper's mouth. His mother must be so proud.

"I was disappointed to learn you went to St. Anunzio for school," said Kolarich. He pointed to himself. "Bonaventure."

Rivers watched him a moment, then showed his teeth. "Bon-Bons, huh? Too bad for you."

Rival south-side high schools. It was time to play south-side geography: Which parish did you attend, which place did you go for kraut dogs, which bar was your favorite, Lucky Joe's or the Green Castle? It loosened Marshall's tongue. Gotta get that tongue loose first.

"You don't live near Anunzio anymore," Kolarich noted.

"Nah. Not the same place no more. I like burgers more than tacos, know what I mean?"

"Tell me fuckin' about it." Kolarich rolled his eyes and spoke out of the side of his mouth. "You been by Leland Park any time lately? I think English is the second language down there now."

Rivers liked that. He liked that a lot. It seemed to Kolarich like the right way to break through with this guy. People who didn't amount to a whole lot, like Rivers, tended to blame other things for their troubles, principal among them the shifting demographics. There were lots of good, decent people on the city's south side, but it was just like any other neighborhood—there were plenty of assholes, too. Marshall Rivers was one of them.

And Kolarich was a chameleon. When his goal was to connect with a suspect—and it usually was—he could flip a switch inside himself. He had actually fallen pretty hard for a Mexican girl at Bonaventure, a sophomore named Tina who never gave him the time of day, but at this moment, Kolarich forgot all about her.

"Anyway." Kolarich jabbed a thumb at the door. "This *mexicana*? I'm sorry, this *Latina* girl, excuse me." He shook his head. "Seems like a nice girl, but I swear to God, she doesn't speak two words of English." He chuckled. He put out his hands. "Best I can understand her, she says you confronted her and tried to get her into a car. Is that true?"

Rivers froze up. "Nah, man, that ain't what happened at all. That chick, she waves at me for directions, see, so I pull over the car, and then she asks me if I want a little sucky-sucky. I said no fuckin'

thanks.”

Kolarich expelled a short breath, a small laugh, and covered his eyes with his hand in bemusement. It was about what he expected from Rivers, who’d had several hours to come up with that tale. *Yeah*, he thought to himself, *that’s why an undocumented immigrant would run to the cops, the last people in the world she ever wants to see. Because a potential john turned down her offer of a blow job while she was carrying her baby in a pouch.*

“That’s about what I figured.” Kolarich put his hands flat on the table. “For Christ’s sake. Why am I not surprised?”

Rivers, still a bit wary but loosening up, showed his teeth again, a shark baring his fangs.

Kolarich threw up his arms as if agitated. “You know what? Fuck this,” he said. “I’m not going to screw up your life based on the word of some *chiquita* who probably doesn’t have her green card and can’t even bother to learn our language. I’m not going to do it. I don’t care. I’m not. So forget that, Marshall. I’m not pursuing that.”

Rivers watched him, his eyes intense, cautiously appraising the prosecutor. “You’re serious?”

“Yeah, I’m serious. I’m not charging you on that.” Kolarich flicked his wrist, a straight line in the air. “That’s done.”

Rivers nodded, sitting back in his chair, still cautious but getting looser and looser by the minute. *This guy’s all right*, he must have been thinking. “I appreciate that, man.”

“The gun, though.” Kolarich knifed a hand onto the table. “Coppers saw you toss the gun. That’s not on the immigrant girl. That’s got nothing to do with her.”

“I didn’t toss no gun.”

Kolarich raised a hand. “Here’s *my* problem. I have to clear this case, right? This is a case, with a number assigned to it, that needs a resolution, or someone’s going to be all over me asking why the fuck there’s no ‘solve’ next to it.”

Rivers didn’t speak. Kolarich fell back against his chair, his eyes on the ceiling. Then he made a face, tilted his head back and forth, all like he was pondering how to get around this thing.

He came forward again, elbows on the table. “Let me ask you, off the record. Not quoting you, nobody but you and me. It is your gun?”

“Nah, man. Not my gun.” Rivers closed his arms in on himself. He was tightening up, becoming defensive. Kolarich would lose him if he wasn’t careful.

“Okay.” He clapped his hands together. “This is going to turn into a case, then. Because I got two coppers who say you tossed it from the car.” He jabbed his thumb at the door. “You get that? I can shit-can this part about the Mexican girl, because the coppers, they didn’t see that with their own eyes. I’ll tell them that I don’t believe the girl, and that’s that. But the gun? If I go out there and say, no, he denies it, they’re going to insist that you be charged, because you’re calling them *liars*. They can’t have that. They

can't have a file that says they lied. Know what I mean?"

He thought that Rivers could follow that. It all made sense.

"So then you go to trial, Marshall. You go to trial, and it's you against two decorated police officers."

Rivers ran his tongue over the inside of his cheek. His foot tapped the floor like a drummer on too much caffeine.

"S'posin' it was my gun," he said. "Just . . . s'posin'."

"Well." Kolarich put out his hands. "If you tell me it's your gun, if you put that in writing, I can agree not to charge you. The cops, they don't give a fuck about what happens to you after the arrest. They just want their arrest to be righteous. They don't want anyone saying they fucked up. So, yeah—you admit it was yours, so nobody's calling the cops liars, I make the decision not to prosecute you, and we get another gun off the street."

Rivers pointed at him, animated, seeing real hope for the first time. "And *you* put it in writing, too."

Kolarich smiled. "You're a smart man. Yeah, of course I will. In fact, I'll write it first, so you know I'm being straight."

Kolarich slid the notepad over in front of him and removed the Bic pen from his pocket.

In exchange for the statement below, the county attorney's office agrees not to prosecute Marshall Rivers in state court for unlawful use of a weapon and will transfer this matter in accordance with Operation Safe Streets. Mr. Rivers acknowledges that he has been made aware of his rights pursuant to Miranda v. Arizona.

Kolarich signed his name below the words and drew a signature line for Marshall Rivers, too.

"There," he said, sliding the notepad across to Rivers.

Rivers read it over, then looked up at Kolarich. "What's that mean, a 'transfer'?"

"It means I'm going to close the file," said Kolarich. "I 'transfer' it from an 'active' case to a 'closed' case."

Rivers looked down at the paper again. "And what's this Oper—"

"Operation Safe Streets is our program for getting guns off the street. If you bring in a gun, we take it, no questions asked. That's why I can do this, Marshall. That's why I can give you a pass. Because you're giving up the gun."

The best lies, in Kolarich's experience, had some truth interwoven. There had, truly, been programs like that in the past, sponsored by the city police department. Most people had heard of them, presumably Marshall included. *Bring in your gun, we'll take it off your hands, you walk away, no hassle.*

But it wasn't called Operation Safe Streets.

No, Operation Safe Streets was a program launched by the US Attorney's Office that scooped eligible firearms cases from local law enforcement so they could be prosecuted in federal court, where the

penalties for repeat gun offenses could reach the double digits in years. Typically, they found offenders with multiple gun violations on their records and put them away for ten to fifteen years in federal prison.

Kolarich's call, before entering the interview room, had been to an FBI agent who owed him one. He'd be here any minute, ready to scoop up Marshall Rivers on a federal gun charge. With any luck, Rivers could be looking at ten years. He deserved more, but it was the best Kolarich could do.

Rivers scratched at his face. "Should I get a lawyer?"

"That's absolutely your right," said Kolarich. "Might not be a bad idea. You want a lawyer to look at it, no problem." He checked his watch. "Shit," he said.

"What? Shit what?"

Kolarich tapped his watch. There was a clock on the wall as well. "This time of night, there isn't a public defender around. You can sleep in a cell downstairs and they'll have one for you, maybe, noon tomorrow. Another twelve, thirteen hours."

The public defender working the overnight shift, Steve Glockner, was not more than two hundred feet from the interview room as they spoke.

It's absolutely your right," Kolarich repeated. "Plus . . . well . . ." He grimaced.

"What?"

"Well, the coppers again." He leaned his head on a hand. "Can I just say, cops are a pain in the ass?"

"What about 'em?"

Kolarich sighed. "The two cops that pinched you, they have to stay here until this is closed. They'll have to stay here all night. I'm just worried that, if I make them wait, they're going to say to me, *Why not just charge Marshall so we can all go home?* For them, that's the easiest outcome. They just want me to sign off on a charge of unlawful use of a weapon so they can grab a late dinner." Kolarich sighed again. "Which, I suppose, is the easier thing to do, now that I'm thinking—"

"No, no." Rivers waved his hands. "I wanna go home, too, right?"

Kolarich shrugged. "Yeah, we all do. But you definitely have the right to a lawyer—"

"Nah, nah. I get what this says. I get it."

Rivers picked up his pen and started writing. He signed in both places, next to Kolarich's signature on the prefatory language and at the bottom, after his statement confessing to the gun possession.²⁸

²⁸ *The Last Alibi* by David Ellis.